IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A. No.236 of 1986
Date of decision : 10.7.2007

Dhian Singh

....Appellant through
Mr.D.S.Patwalia,
Advocate

Versus

State of Punjab and others

... Respondents through
Mr.A.G.Masih, Sr.Deputy
Advocate General,Punjab

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Vijender Jain, Chief Justice (Oral)

Aggrieved by the order passed by the learned Single Judge, Dhian Singh, now deceased filed this Letters Patent Appeal in this Court on the ground that neither the copies of the statements of the witnesses nor a list of witnesses was supplied to him by the Inquiry Officer in spite of the fact that repeated requests were made to him.

Mr. Patwalia, learned counsel appearing for the appellant has contended that the appellant was dismissed from service on the basis of the inquiry report and it was mandatory on the part of the respondents to have complied with the principles of natural justice by supplying the copies of the preliminary inquiry report as well as the names of the witnesses and the statements of the witnesses who deposed against him.

On the other hand, Mr. Masih, learned Senior Deputy Advocate General, Punjab has vehemently contended that the appellant did not request for supply of the copy of the inquiry report or the list of the witnesses or the statements of the witnesses. He emphasised that the appellant was allowed to take notes of the inquiry report as well as other relevant documents and it cannot be said that any prejudice was caused on the appellant. He further contended that there was no provision under the Punjab Police Rule 16.24 for supply of such documents during departmental inquiry.

In support of his submission learned counsel for the appellant relied upon **Union of India and others v. Mohd. Ramzan Khan** 1991(1) SLR 159.

We have given our careful consideration to the arguments advanced by the learned counsel for both the parties. There is an inherent contradiction in the stand of the State brought about on examination of the pleadings of the parties. What was argued before us was that the appellant did not request for supply of copies of the inquiry report as well as other documents. However, in ground no. (iii) in the writ petition the appellant has taken a categoric stand "That neither copies of statements of witnesses nor a list of witnesses was supplies to the petitioner by the Enquiry Officer inspite of the fact that repeated requests were made to him."

In the reply of the State of Punjab to the corresponding para (iii) of the grounds taken in the writ petition which is at page 30 of the paper-book reads "That this para is wrong and incorrect, therefore is denied. All the witnesses were examined in the presence

of the petitioner and he was allowed to take down notes of their statements & cross examine them as required under Punjab Police Rule 16.24. There is no provision for the supply of such documents during the departmental enquiry."

On the one hand, the stand of the State was that no request was made by the appellant for supply of these documents, while in the counter-affidavit filed to the writ petition the non-supply of the documents was stated to be on account of the fact that there was no provision for supply of such documents during a departmental inquiry, a position so interpreted by the respondents.

Refuting the submission of the learned counsel for the State it was contended before us by the learned counsel for the appellant that allowing the delinquent official to take notes of the documents or the proceedings will not satisfy the requirement of the principles of natural justice and it was mandatory on the respondents to supply the copy of the material which was to be used against the delinquent official. In this connection reliance was placed on **Kashinath Dikshita v. Union of India and others** AIR 1986 SC 2118. Para 9 of the judgment reads as under :

> "9. This application was unceremoniously rejected by the Board on December 20, 1963. It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to

him.

The extracts quoted hereinabove leave no room for doubt that the disciplinary authority, refused to furnish to the appellant copies of documents and copies of statements. When a Government servant is facing a disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defense, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : “What is the harm in making available the material?” and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being

wasted if the Courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from communication dated 25-7-1962 from the disciplinary authority to the appellant :-

"The Government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific

documents from out of those inspected by you, the request will be considered on merits in each case by the Government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the Government could be obtained for the same. xxxx As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge,so that orders of Government could be obtained.

Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk."

A very novel argument was raised by the learned counsel for the State before us that the judgment supplied by the learned counsel for the appellant pertains to the year 1986 and the concept of supplying documents in an inquiry was prospective in nature and as the inquiry was held in 1974, the principles of natural justice will not come into play.

We are afraid that this submission of the learned counsel for the State is also not tenable in law. The law is consistent on this aspect of the matter. The Supreme Court in **Krishna Chandra**

Tandon v. The Union of India (1974) 4 Supreme Court Cases 374 has held in paras 12, 15 and 16 as under :

> (i) The High Court came to the conclusion that except in case of two items, the decision of the Commissioner of Income-tax was based on evidence. That, however, does not make any difference to the punishment as the punishment can be supported on some finding of substantial misdemeanour.
>
> (ii) The first charge-sheet was described as Memo. but it mentioned the charges and asked to show-cause as to why he should not be suitably dealt with. It cannot be contended that there was no charge-sheet contemplating formal enquiry. It is not necessary that the contemplated punishment should be mentioned in the charge-sheet.
>
> (iii) When the complaints were received by the Commissioner, he called for the reports from the Inspecting Assistant Commissioner. The delinquent was not entitled to copies of these reports unless the enquiry officer or the disciplinary authority relied on the same."

It is an admitted case of the parties that the doctor who gave a report that the appellant was under the influence of liquor, a charge against the appellant on account of which he faced disciplinary proceedings; was not examined. His report was relied upon to inflict fatality to the case of the appellant.

In our opinion, non-supply of such report and the inquiry report which has been used against the appellant has caused serious

prejudice to his case.

Therefore, the order passed by the learned Single Judge ignoring this legal and factual aspect cannot be sustained in the eyes of law. The same is hereby set aside. The inquiry proceedings are quashed.

As the appellant has died during the pendency of the appeal, the respondents shall make the payment of all the consequential benefits, including the family pension to the legal heirs of the deceased.

Appeal allowed.

(VIJENDER JAIN)
CHIEF JUSTICE

10.7.2007

(MAHESH GROVER)
JUDGE

dss